



New South Wales

National Broadband Network Co-ordinator Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to facilitate and accelerate the rollout of the National Broadband Network in New South Wales. For that purpose, the Bill:

- (a) establishes a NSW NBN Co-ordinator to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network, and
- (b) establishes a NSW NBN Chief Executives Committee to advise the NBN Co-ordinator and issue guidelines and protocols regarding the rollout of the National Broadband Network, and
- (c) requires State government agencies to co-operate with the NBN Co-ordinator in facilitating and assisting the rollout of the National Broadband Network.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 sets out the objects of the proposed Act, which are as follows:

- (a) to facilitate and accelerate the rollout of the National Broadband Network in New South Wales,
- (b) to facilitate the use of existing infrastructure owned by State government agencies for the purposes of the National Broadband Network,
- (c) to establish a NBN Co-ordinator to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network and provide for its functions,
- (d) to require State government agencies to co-operate with the NBN Co-ordinator in facilitating and assisting the rollout of the National Broadband Network,
- (e) to establish a Chief Executives Committee to advise the NBN Co-ordinator and review the exercise of certain powers under the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. The *National Broadband Network* is defined to mean the national telecommunications network for the high-speed delivery of communications constructed, or being constructed, by NBN Co. *NBN Co* is NBN Co Limited (ACN 136 533 741) and includes any of its related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth). The *NBN Co-ordinator* is defined as the NSW NBN Co-ordinator appointed under the proposed Act. A *government agency* is defined to include a public authority, a NSW Government agency, a Division of the Government Service and a State owned corporation, but does not include the NSW Police Force, the Independent Commission Against Corruption or the Ombudsman's Office.

Part 2 NSW NBN Co-ordinator

Clause 5 provides that there is to be a NSW NBN Co-ordinator (the *NBN Co-ordinator*) who is to be the person appointed to that office under Chapter 1A of the *Public Sector Employment and Management Act 2002* (or, until that office is created or during any vacancy in that office, the Director-General of the Department of Services, Technology and Administration).

The NBN Co-ordinator is to have the following functions:

- (a) to facilitate and accelerate the rollout of the National Broadband Network in New South Wales,
- (b) to liaise with government agencies in relation to the rollout of the National Broadband Network,
- (c) to negotiate on behalf of, and act as an agent for, government agencies in their dealings with NBN Co (including by entering into contracts and arrangements on behalf of government agencies),

- (d) to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network,
- (e) to enter into contracts or arrangements on the NBN Co-ordinator's own behalf with NBN Co relating to the rollout of the National Broadband Network,
- (f) such other functions as are conferred on the NBN Co-ordinator by or under the proposed Act or any other Act or law, including by the regulations made under the proposed Act.

Clause 6 provides that the NBN Co-ordinator may delegate his or her functions to a government agency or member of staff of a government agency.

Part 3 NSW NBN Chief Executives Committee

Clause 7 provides for the establishment of a NSW NBN Chief Executives Committee. The Chief Executives Committee is to comprise:

- (a) the Director-General of the Department of Services, Technology and Administration or the Director-General's nominee, who is to be the presiding member of the Committee, and
- (b) the Director-General of the Department of Premier and Cabinet or the Director-General's nominee, and
- (c) the Director-General of the Department of Industry and Investment or the Director-General's nominee, and
- (d) the Secretary of the Treasury or the Secretary's nominee, and
- (e) the Director-General of Transport NSW or the Director-General's nominee.

The Chief Executives Committee is to have the following functions:

- (a) to advise on the exercise of functions under the proposed Act in relation to the rollout of the National Broadband Network in New South Wales,
- (b) to issue guidelines in relation to the consultation that the NBN Co-ordinator should undertake when carrying out his or her functions under the proposed Act,
- (c) to prepare protocols for government agencies in relation to developing and implementing agreements with NBN Co regarding the rollout of the National Broadband Network in New South Wales,
- (d) such other functions as are conferred on the Chief Executives Committee by or under the proposed Act or any other Act or law.

Clause 8 provides that the Chief Executives Committee may appoint advisory committees.

Part 4 Co-ordination of State government agencies in rollout of National Broadband Network

Clause 9 imposes obligations on government agencies in respect of the rollout of the National Broadband Network in New South Wales. These include the following obligations:

- (a) to facilitate and assist the rollout of the National Broadband Network,
- (b) to co-operate with the NBN Co-ordinator in the exercise of his or her functions, including complying with any request of the NBN Co-ordinator for information to enable the NBN Co-ordinator to exercise his or her functions,
- (c) to notify the NBN Co-ordinator of any proposed exercise of the agency's functions that may impact adversely on the exercise of the NBN Co-ordinator's functions.

Clause 10 authorises and empowers government agencies:

- (a) to exercise any of their functions in order to facilitate and assist the rollout of the National Broadband Network, and for that purpose enter into agreements and arrangements with NBN Co, and
- (b) to exercise any of their functions in order to comply with a request of the NBN Co-ordinator made under the proposed Act, and
- (c) to enter into agreements with the NBN Co-ordinator for the purposes of the proposed Act and to do or suffer anything necessary or expedient for carrying any such agreement into effect.

Clause 11 provides that the NBN Co-ordinator may request that a government agency:

- (a) appoint the NBN Co-ordinator as the agent for the government agency in its dealings with NBN Co (including authorising the NBN Co-ordinator to enter into contracts and arrangements with NBN Co on behalf of the government agency), and
- (b) enter into a specified contract or arrangement with NBN Co, and
- (c) provide resources and assistance to facilitate or assist the rollout of the National Broadband Network, and
- (d) refrain from negotiating, or entering into, any agreement with NBN Co, and
- (e) exercise the agency's functions for the purpose of facilitating and assisting the rollout of the National Broadband Network.

Clause 12 enables the Minister to direct government agencies that exercise functions that may facilitate, assist or affect the rollout of the National Broadband Network (or other government agencies declared by the regulations) to comply with a request of the NBN Co-ordinator.

Part 5 Miscellaneous

Clause 13 provides that the proposed Act is to bind the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Clause 14 protects the NBN Co-ordinator, members of the Chief Executives Committee or an advisory committee, and persons acting under the direction of any of them, from personal liability in respect of acts done in good faith for the purposes of executing the proposed Act.

Clause 15 specifically authorises certain conduct done in connection with the rollout of the National Broadband Network that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

Clause 16 enables the Governor to make regulations for the purposes of the proposed Act (including regulations of a savings or transitional nature consequent on the enactment of the proposed Act).

Clause 17 provides for the review of the proposed Act in 5 years.

Clause 18 provides for the repeal of the proposed Act. The NBN Co-ordinator is to keep the need for the Act under review and, if the NBN Co-ordinator certifies it is no longer required, the Act may be repealed by proclamation.



New South Wales

National Broadband Network Co-ordinator Bill 2010

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New South Wales

National Broadband Network Co-ordinator Bill 2010

No. , 2010

A Bill for

An Act to facilitate and accelerate the rollout of the National Broadband Network in New South Wales by establishing a NSW NBN Co-ordinator; and for other purposes.

Clause 1 National Broadband Network Co-ordinator Bill 2010

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *National Broadband Network Co-ordinator Act 2010*. 4

2 Commencement 5

This Act commences on the date of assent to this Act. 6

3 Objects of Act 7

The objects of this Act are as follows: 8

(a) to facilitate and accelerate the rollout of the National Broadband Network in New South Wales, 9
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(b) to facilitate the use of existing infrastructure owned by State government agencies for the purposes of the National Broadband Network, 11
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(c) to establish a NBN Co-ordinator to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network and provide for its functions, 14
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(d) to require State government agencies to co-operate with the NBN Co-ordinator in facilitating and assisting the rollout of the National Broadband Network, 17
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(e) to establish a Chief Executives Committee to advise the NBN Co-ordinator and review the exercise of certain powers under this Act. 20
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4 Definitions 23

(1) In this Act: 24

Chief Executives Committee means the NSW NBN Chief Executives Committee established under section 7. 25
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exercise a function includes perform a duty. 27

function includes a power, authority or duty. 28

government agency means: 29

(a) a public authority constituted by or under an Act, or 30

(b) a NSW Government agency, or 31

(c) a Division of the Government Service, or 32

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- (d) a State owned corporation, 1
but does not include the NSW Police Force, the Independent 2
Commission Against Corruption or the Ombudsman's Office. 3
National Broadband Network means the national telecommunications 4
network for the high-speed delivery of communications constructed, or 5
being constructed, by NBN Co. 6
NBN Co means NBN Co Limited (ACN 136 533 741) and includes any 7
of its related bodies corporate (within the meaning of the *Corporations* 8
Act 2001 of the Commonwealth). 9
NBN Co-ordinator means the NSW NBN Co-ordinator under section 5. 10
- (2) Notes included in this Act do not form part of this Act. 11

Part 2	NSW NBN Co-ordinator	1
5	The NSW NBN Co-ordinator	2
(1)	There is to be a NSW NBN Co-ordinator.	3
(2)	The NBN Co-ordinator is:	4
(a)	the person holding office as the NBN Co-ordinator under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> , or	5 6 7
(b)	until that office is created or during any vacancy in that office, the Director-General of the Department of Services, Technology and Administration.	8 9 10
(3)	The NBN Co-ordinator has the following functions:	11
(a)	to facilitate and accelerate the rollout of the National Broadband Network in New South Wales,	12 13
(b)	to liaise with government agencies in relation to the rollout of the National Broadband Network,	14 15
(c)	to negotiate on behalf of, and act as an agent for, government agencies in their dealings with NBN Co (including by entering into contracts and arrangements on behalf of government agencies),	16 17 18 19
(d)	to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network,	20 21 22
(e)	to enter into contracts or arrangements on the NBN Co-ordinator's own behalf with NBN Co relating to the rollout of the National Broadband Network,	23 24 25
(f)	such other functions as are conferred on the NBN Co-ordinator by or under this or any other Act or law, including by the regulations made under this Act.	26 27 28
6	Delegation of NBN Co-ordinator's functions	29
(1)	The NBN Co-ordinator may delegate to an authorised person any of his or her functions, other than this power of delegation.	30 31
(2)	A delegate may sub-delegate to an authorised person any function delegated by the NBN Co-ordinator if the delegate is authorised in writing to do so by the NBN Co-ordinator.	32 33 34
(3)	In this section, <i>authorised person</i> means a government agency or member of staff of a government agency.	35 36

Part 3	NSW NBN Chief Executives Committee	1
7	Establishment of NSW NBN Chief Executives Committee	2
(1)	The Minister is to establish a NSW NBN Chief Executives Committee.	3
(2)	The Chief Executives Committee has the following functions:	4
(a)	to advise on the exercise of functions under this Act in relation to the rollout of the National Broadband Network in New South Wales,	5 6 7
(b)	to issue guidelines in relation to the consultation that the NBN Co-ordinator should undertake when carrying out functions under this Act,	8 9 10
(c)	to prepare protocols for government agencies in relation to developing and implementing agreements with NBN Co regarding the rollout of the National Broadband Network,	11 12 13
(d)	such other functions as are conferred on the Chief Executives Committee by or under this or any other Act or law.	14 15
(3)	The Chief Executives Committee is to comprise the following members:	16 17
(a)	the Director-General of the Department of Services, Technology and Administration or the Director-General's nominee, who is to be the presiding member of the Committee,	18 19 20
(b)	the Director-General of the Department of Premier and Cabinet or the Director-General's nominee,	21 22
(c)	the Director-General of the Department of Industry and Investment or the Director-General's nominee,	23 24
(d)	the Secretary of the Treasury or the Secretary's nominee,	25
(e)	the Director-General of Transport NSW or the Director-General's nominee.	26 27
(4)	Subject to the regulations, the term of office of members of the Chief Executives Committee, the procedure for calling meetings of the Committee and the conduct of business at those meetings are to be determined by the presiding member of the Committee.	28 29 30 31
8	Appointment of advisory committees	32
(1)	The Chief Executives Committee may appoint such advisory committees as the Committee considers appropriate for the purposes of advising the Chief Executives Committee for the purposes of this Act.	33 34 35
(2)	An advisory committee has such functions as the Chief Executives Committee may from time to time determine in writing in respect of it.	36 37

Clause 8 National Broadband Network Co-ordinator Bill 2010

Part 3 NSW NBN Chief Executives Committee

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| (3) | An advisory committee consists of such committee members appointed by the Chief Executives Committee as the Chief Executives Committee thinks fit. | 1
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| (4) | An advisory committee member holds office for such period as is specified in the instrument of appointment of the committee member, but any such appointment may be terminated by the Chief Executives Committee at any time. | 4
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| (5) | One of the advisory committee members, in and by the instrument by which the committee member is appointed or another instrument made by the Chief Executives Committee, is to be appointed as chairperson of the committee. | 8
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| (6) | An advisory committee member is entitled to be paid such fees and allowances (if any) as the Minister may determine, from time to time, in respect of the committee member. | 12
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| (7) | Subject to the regulations and any directions of the Chief Executives Committee, the procedure of an advisory committee appointed under this section is to be as determined by the advisory committee. | 15
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| (8) | The Chief Executives Committee may dissolve an advisory committee appointed under this section. | 18
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Part 4	Co-ordination of State government agencies in rollout of National Broadband Network	1
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9	Obligations of government agencies	3
	A government agency has the following obligations in respect of the rollout of the National Broadband Network in New South Wales:	4
		5
	(a) to facilitate and assist the rollout of the National Broadband Network,	6
		7
	(b) to co-operate with the NBN Co-ordinator in the exercise of his or her functions, including complying with any request of the NBN Co-ordinator for information to enable the NBN Co-ordinator to exercise his or her functions,	8
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		11
	(c) to notify the NBN Co-ordinator of any proposed exercise of the agency's functions that may impact adversely on the exercise of the NBN Co-ordinator's functions.	12
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10	Powers of government agencies	15
	Despite the provisions of any other Act or law, a government agency:	16
	(a) is authorised and empowered to exercise any of its functions in order to facilitate and assist the rollout of the National Broadband Network, and for that purpose may enter into agreements and arrangements with NBN Co, and	17
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	(b) is authorised to exercise any of its functions in order to comply with a request of the NBN Co-ordinator made under this Act, and	21
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	(c) is authorised and empowered to enter into agreements with the NBN Co-ordinator for the purposes of this Act and may do or suffer anything necessary or expedient for carrying any such agreement into effect.	23
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11	NBN Co-ordinator may request co-operation of government agencies	27
	Without limiting the exercise of the NBN Co-ordinator's functions under this Act, the NBN Co-ordinator may request that a government agency:	28
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		30
	(a) appoint the NBN Co-ordinator as the agent for the government agency in its dealings with NBN Co (including authorising the NBN Co-ordinator to enter into contracts and arrangements with NBN Co on behalf of the government agency), and	31
		32
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	(b) enter into a specified contract or arrangement with NBN Co, and	35
	(c) provide resources and assistance to facilitate or assist the rollout of the National Broadband Network, and	36
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Clause 12 National Broadband Network Co-ordinator Bill 2010

Part 4 Co-ordination of State government agencies in rollout of National Broadband Network

(d)	refrain from negotiating, or entering into, any agreement with NBN Co, and	1 2
(e)	exercise the agency's functions for the purpose of facilitating and assisting the rollout of the National Broadband Network.	3 4
12	Minister may direct government agencies to co-operate	5
(1)	This section applies to any government agency:	6
(a)	that exercises functions that may facilitate, assist or affect the rollout of the National Broadband Network in New South Wales, or	7 8 9
(b)	that is declared by the regulations to be an agency to which this section applies.	10 11
(2)	The Minister may, by notice in writing given to any such government agency, direct the agency to comply with a request made by the NBN Co-ordinator for the purposes of his or her functions under this Act.	12 13 14
(3)	Before giving any direction under this section the Minister is to:	15
(a)	consult with the Chief Executives Committee, and	16
(b)	if the direction is to be given to a State owned corporation—consult with the voting shareholders of the State owned corporation.	17 18 19

Part 5	Miscellaneous	1
13	Act to bind Crown	2
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	3 4 5
14	Personal liability	6
	A matter or thing done or omitted to be done by:	7
	(a) the NBN Co-ordinator or a person acting under the direction of the NBN Co-ordinator, or	8 9
	(b) the Chief Executives Committee, a member of the Chief Executives Committee or a person acting under the direction of that Committee or a member of that Committee, or	10 11 12
	(c) an advisory committee established by the Chief Executives Committee, a member of such a committee or a person acting under the direction of any such committee or member of a committee,	13 14 15 16
	does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the NBN Co-ordinator, a member of the Chief Executives Committee or an advisory committee or a person so acting personally to any action, liability, claim or demand.	17 18 19 20 21
15	Authorisations for purposes of Trade Practices Act 1974 of the Commonwealth	22 23
	(1) The following things are specifically authorised by this Act for the purposes of section 51 of the <i>Trade Practices Act 1974</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> :	24 25 26
	(a) anything done by the NBN Co-ordinator in exercising functions under this Act,	27 28
	(b) anything done by a government agency to facilitate or assist the rollout of the National Broadband Network,	29 30
	(c) anything done by a person or a government agency in order to comply with a request made by the NBN Co-ordinator under this Act,	31 32 33
	(d) anything done by a person in order to comply with a direction of the Minister under this Act,	34 35
	(e) the entering into of an agreement at the request of, or negotiated by, the NBN Co-ordinator under this Act,	36 37

(f)	the doing of anything preparatory or incidental to the entering into of any such agreement,	1 2
(g)	anything done under any such agreement.	3
(2)	Things authorised to be done by subsection (1) are authorised only to the extent (if any) that they would otherwise contravene Part IV of the <i>Trade Practices Act 1974</i> of the Commonwealth or the <i>Competition Code of New South Wales</i> .	4 5 6 7
(3)	This section extends to any contract determination made or agreement entered into before the commencement of this section.	8 9
16	Regulations	10
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	11 12 13 14
(2)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.	15 16
(3)	Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.	17 18
(4)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	19 20 21
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	22 23 24
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	25 26 27
17	Review of Act	28
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	29 30 31
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	32 33
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	34 35

18	Repeal of Act	1
(1)	The NBN Co-ordinator is to keep the need for this Act under review having regard to the object of this Act.	2 3
(2)	If the NBN Co-ordinator determines that this Act is no longer required, the NBN Co-ordinator is to provide a certificate to that effect to the Minister.	4 5 6
(3)	This Act is repealed on a day appointed by proclamation published on the NSW legislation website after the NBN Co-ordinator has provided a certificate that this Act is no longer required.	7 8 9